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YANG, CLARA I	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal 2007-3651
Application 10/043,077
Technology Center 2600

Decided: March 7, 2008

Before JOSEPH F. RUGGIERO, ROBERT E. NAPPI,
and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 18-23, 30-45 and 57-67. We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF CASE

Appellant discloses a control system for a vehicle. (Specification 1: 8-10). The vehicle control system reduces the risk of an unauthorized remote transmitter, token or biometric characteristic permitting a person to operate the vehicle control system. (Specification 4: 28-35).

Claims 18-23, 30-45 and 57-67 are pending in the application and have been rejected over prior art.

Independent claim 18, which is deemed to be representative, reads as follows:

> 18. A vehicle control system for a vehicle comprising a vehicle data communications bus extending throughout the vehicle, and a vehicle indicator connected thereto, the vehicle control system comprising:
>
> at least one uniquely coded transmitter to be carried by a user;
>
> a receiver at the vehicle for receiving signals from said at least one uniquely coded transmitter; and
>
> a controller at the vehicle spaced apart from the vehicle indicator and cooperating with said receiver and the vehicle data communications bus for
>
> learning the at least one uniquely coded transmitter to permit control of a vehicle function by the user,
>
> communicating with the vehicle indicator via said data communications bus to cause an indication of whether at least one new uniquely coded transmitter has been learned, and
>
> causing an indication of a number of learned uniquely coded transmitters.

The Examiner relies on the following prior art references to show unpatentability:

Flick '571	US 5,986,571	Nov. 16, 1999
Flick '460	US 6,011,460	Jan. 4, 2000
Ogino	US 6,100,792	Aug. 8, 2000
Anzai	US 6,271,745 B1	Aug. 7, 2001

The Examiner rejected, under 35 U.S.C. § 103(a),

claims 18-20 and 23 as unpatentable over Ogino and Flick '571,

claims 21 and 22 as unpatentable over Ogino, Flick '571 and Flick '460,

claims 30-39, 42, 43, 45, and 57-66 as unpatentable over Anzai and Flick '460, and

claims 40, 41, 44, and 67 as unpatentable over Anzai, Flick '460 and Flick '571.

While Appellant has indicated the appeal of the rejections of all of the pending claims, Appellant has argued the patentability of elements of independent claims 18, 30, and 57, has argued that independent claim 57 is a "method counterpart to [c]laim 30 and includes similar recitations," (Br. 4), and has not argued the patentability of any of the dependent claims apart from their dependence on the independent claims. Therefore, we take claims 18 to be representative of the group of claims 18-20 and 23 rejected as unpatentable over Ogino and Flick '571and 30 to be representative of the group of claims 30-39, 42, 43, 45, and 57-66 rejected as unpatentable over Anzai and Flick '460,of the argued claims. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We affirm.

ISSUES

1) Has Appellant shown that the Examiner erred in finding claim 18 obvious over Ogino and Flick '571?

2) Has Appellant shown that the Examiner erred in finding claim 30 obvious over Anzai and Flick '460?

FINDINGS OF FACT

1. The application details a vehicle control system for a vehicle having a vehicle data communications bus extending throughout the vehicle. The vehicle control system includes at least one uniquely coded transmitter carried by a user, a receiver at the vehicle, and a controller. The controller is capable of learning the at least one uniquely coded transmitter to permit control of a vehicle function by the user, communicating a vehicle indicator via the data communications bus to cause an indication of whether a new uniquely coded transmitter has been learned, and causing an indication of a number of learned uniquely coded transmitters. (Specification 9: 13 – 11: 26; Fig. 1, elements 10, 11, 15a, 15b, 20, 21 and 26a-26f).

2. The application also details a vehicle control system for a vehicle having a data communications bus and at least one vehicle device connected thereto. The vehicle control system includes a biometric characteristic sensor for sensing a unique biometric characteristic of a user, and a controller cooperating with the biometric characteristic sensor and the vehicle data communications bus. The controller is capable of learning the unique biometric characteristic to permit control of a vehicle function by the

user, and causing an indication of whether at least one new unique biometric characteristic has been learned. (Specification 14: 13-30; Fig. 2, elements 10', 11', 21', 27', 33', 35', 41', 42', 44' and 50).

3. Ogino discloses a car security system for protecting a vehicle from car theft and tampering. The system includes a plurality of vehicle devices connected by a bus extending through the vehicle. The security system is accessible through a two-way remote unit that communicates with a transceiver in the vehicle. The system also includes a controller that permits ID codes of the remote units to be learned. (Col. 5, ll. 3-50; Figs. 1 and 3, elements 1, 1a, 2, 6, 10, 11, 12, 17).

4. Anzai discloses a system for identifying the user of a vehicle and providing a level of authorization as a function of the identification of the user is disclosed. This authentication can be made through fingerprint reading units located on the exterior and in the interior of the vehicle for scanning the fingerprint of a user of the vehicle. A control unit receives the output of the fingerprint reading unit and performs comparison and matching functions with stored data. A vehicle locking unit is provided for enabling the operation of a plurality of vehicle locks. (Col. 4, ll. 24-67; col. 6, ll. 25-35; Fig. 1, elements 1, 3, 5, 7, 11, 13, 15, 39).

5. Flick '571 discloses a building security system that includes an alarm controller for learning a unique remote transmitter code to define a learned transmitter capable of switching the controller between armed and disarmed states. The number of learned remote transmitters may be displayed and a previous set of authorized or learned remote transmitter codes may be readily reset or restored to operate the system if unauthorized

codes have been more recently added. (Abstract; col. 5, ll. 21-26 and 48-51; Figs. 1 and 2, elements 11, 13, 47 and 50).

6. Flick '460 is directed to a vehicle security system which includes a vehicle security sensor, an alarm controller and a data communications bus connecting a plurality of vehicle devices. The security system includes a signal enabling circuit for enabling the alarm controller to operate using a set of desired signals for a desired vehicle from among a plurality of possible sets of signals for different vehicles. The signal enabling circuit may learn the desired set of signals from the plurality of different sets of signals for different vehicles by connection and communications with a downloading device, such as a portable or laptop computer. (Abstract).

PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker,* 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellant to overcome the prima facie case with argument and/or evidence. *See Id.*

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The analysis need not seek out precise teachings directed to the specific subject matter of the claim but can take into account the inferences and the creative steps that a person of ordinary skill in the art would employ. *KSR Int'l Co. v. Teleflex Inc.,* 127 S.Ct. 1727, 1741 (2007).

ANALYSIS

As indicated by the Examiner, (Answer 10), Appellant's arguments are concerned only with the motivation to combine the references applied in the rejections and there are no arguments presented by Appellant indicating that elements of the claims that are not taught or suggested by the cited references. In Appellant's arguments, Appellant alleges that the combinations of the references in the rejections disregard the stated objectives of each reference. Appellant seems to argue that if a proposed modification does not match the stated objective of the reference, the modification cannot be supported by proper motivation. We find no precedent for disqualifying an obviousness rejection on such a basis. While the objective of each reference needs to be considered in making a combination in an obviousness rejection, the objective, by itself, is not determinative of the propriety of the combination. "Common sense teaches, however, that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* at 1742.

Appellant argues that Christenson, cited in the Final Office Action, fails to supply motivation to combine Ogino and Flick '571, (Br. 7), but we agree with the Examiner that any discussion of Christenson is immaterial because proper motivation has been supplied via Flick '571. Appellant also argues that the motivation to modify the security unit of Ogino to indicate a number of remote units, based on Flick '571, runs counter to and disregards the stated objectives of each reference. (Br. 7 and 9). Similarly, Appellant argues that replacing the hardware connections of Anzai with the data

communication bus of Flick '460 lacks motivation because such a modification "does not further its [Anzai] objective of providing a keyless identification system." (Br. 10-11). As discussed above, we do not find the stated objectives of the references to be controlling as to whether the references can be combined. We find the motivations supplied in the rejections combining Ogino and Flick '571, and Anzai and Flick '460, to be proper and sufficient. As such, we find no error in the rejection of claims 18-20 and 23 as unpatentable over Ogino and Flick '571 or the rejection of claims 30-39, 42, 43, 45, and 57-66 as unpatentable over Anzai and Flick '460. Further, as the Appellant has not specifically provided arguments directed to the rejection of claims 21 and 22 as unpatentable over Ogino, Flick '571 and Flick '460, and of claims 40, 41, 44, and 67 as unpatentable over Anzai, Flick '460 and Flick '571, we affirm the Examiner's rejection of these claims for the reasons discussed with respect to claims 18 and 30.

CONCLUSION OF LAW

We find that the Examiner did not err in rejecting claims 18-23, 30-45 and 57-67 under 35 U.S.C. § 103 based on Ogino, Flick '571, Flick '460 and Anzai.

DECISION

The rejections of claims 18-23, 30-45 and 57-67 are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tdl/gw

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